



PATENT
Attorney Docket No. 102.0003-04000
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Gary Karlin Michelson, M.D.) Confirmation No. 6124
Serial No.: 09/626,636) Group Art Unit: 3731
Filed: July 27, 2000) Examiner: U. Ho
For: APPARATUS AND METHOD OF)
INSERTING SPINAL IMPLANTS)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Further to the Information Disclosure Statement dated July 27, 2000, July 16, 2001, September 17, 2001, May 23, 2002, and October 23, 2002 and pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed documents were previously submitted and/or cited in the Information Disclosure Statements dated July 27, 2000 or May 23, 2002.

Applicant respectfully requests that the Examiner consider the listed document and indicate that they were considered by making appropriate notations on the attached form.

Applicant brings to the Examiner's attention the following U.S. co-pending application and issued patent of Applicant; the claims and drawings of which are attached hereto:

NOT FOR PUBLICATION			
Examiner Initial	Application Number	Filing Date	Publication/Patent Number
	08/484,927	07JUN95	6,096,038
	10/223,916	20AUG02	2002/0198532

Applicant respectfully requests that the Examiner consider the documents listed above, indicate that they were considered by making appropriate notations in the appropriate column, and return a copy of this sheet to the Applicant.

The present application Serial No. 09/626,636 is a continuation of application Serial No. 08/484,927, now U.S. Patent No. 6,096,038, which is a divisional application of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247.

Applicant brings to the Examiner's attention that the '247 patent was the subject of litigation in the United States District Court for the Central District of California, Western Division, Civil Action No. 95-0258RG, hereinafter referred to as Litigation 1. The claims of the '247 patent are directed to a fusion implant.

The '253 patent was the subject of litigation in the United States District Court for the Western District of Tennessee, Civil Action No. 98-2369GA (JSG), hereinafter referred to as Litigation 2. The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant.

In Litigations 1 and 2, the defendants asserted that various references were pertinent to the issue of validity of the '247 patent, the '253 patent, and the '437 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO-1449 in the column for the Examiner's initials the references identified by defendants in Litigation 1 as being allegedly pertinent to the '247 patent by the

designation "Lit. 1." References identified by the defendants in Litigation 2 as being allegedly pertinent to the '253 patent are identified by the designation "Lit. 2."

Litigations 1 and 2 are no longer pending. The jury in Litigation 2 found all asserted claims of the '253 patent valid in view of the art cited by the defendant. Litigations 1 and 2 were settled with the defendants in each litigation retracting their assertions of invalidity and inequitable conduct. Discovery documents relating to the aforementioned litigations are available upon request.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: September 23, 2003

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